



California Fair Political Practices Commission

July 18, 1989

Bob Connelly
Assembly Rules Committee
State Capitol, Room 3016
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Informal
Assistance
Our File No. I-89-307

Dear Mr. Connelly:

This is in response to your request for assistance regarding the application of the mass mailing provisions of the Political Reform Act (the "Act")^{1/} to the mailings sent by members of the Assembly. Since your request does not refer to a specific mailing, we are treating your request as one for informal assistance.^{2/}

QUESTION

Is the attached memorandum discussing the mass mailing restrictions of Section 89001 accurate?

CONCLUSION

The memorandum that you have enclosed with your advice request which discusses the mass mailing restrictions of the Act is substantially correct.^{3/} However, we would suggest that you

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; Regulation 18329(c)(3).)

^{3/} This analysis of your memorandum discusses only Sections II, III and IV which deal specifically with provisions of the Act.

incorporate the additional information as discussed in this letter to clarify certain aspects of Section 89001. Also, please note that the Commission will be reviewing the mass mailing regulation (Regulation 18901, copy enclosed) at its upcoming Commission meetings, and, consequently, could revise the regulation.

DISCUSSION

1. Section IIA(2) - This section in your memorandum states that "notices of government meetings" are exempt from the mass mailing restrictions. Later in your memorandum you discuss the restrictions applicable to mailings under this exception. It may be advisable to discuss the exception and its limitations together. Regulation 18901(f)(8) provides an exception for mailings sent to the elected officer's constituents which directly relate to that elected official's incumbent governmental duties and which solely include the time, date, place, and a concise description of the subject matter of a public meeting to be held by the elected officer. In addition, the name of the elected official may be used once in the concise description of the subject matter. The purpose of this exception is to allow elected officials to notify their constituents of public meetings held by the elected official.

2. Section IIA(4) - This section in your memorandum states that "mailings sent in connection with the payment or collection of funds by an agency" are exempt from the mass mailing restrictions. Please note that under Regulation 18901(f)(4) an elected official's name, office, title or signature, may appear in the mailing provided each use is necessary to the payment or collection of funds.

3. Section IIA(5) - This section states that certain legally required mailings are exempt from the mass mailing restrictions. Please note that under Regulation 18901(f)(6), an elected official's name, office, title or signature may appear in the mailing, provided each use is legally required in the mailing.

4. Section IIB(1) - This section states that over 200 mailings may be sent in response to each unsolicited specific request, written or oral, received by the elected officer. This is not entirely accurate. An unsolicited specific request for information is a request for one copy of the mailing. (Lockyer Advice Letter, A-89-342, copy enclosed.) The single reply to an unsolicited specific request, however, is not counted toward the mass mailing limit. Thus, if an official sends three copies of a mailing in response to three unsolicited specific requests, the official may still send up to 200 copies of the mailing in a calendar month without violating Section 89001. If a person asks to receive continuing information on a subject or requests to receive a regularly published newsletter, then the request will be considered an unsolicited specific request to receive each mailing

or newsletter mailed in response to the request. (Regulation 18901(h).)

5. Section II(D) - This section states that the names of elected officials may be included provided the officials are not featured. This is not correct. Regulation 18901(c) provides that a mass mailing is prohibited by Section 89001 if the elected officer initiates the mailing, exercises direction or control over the content, production, or distribution of the document, or signs or takes credit for the document and the name of the elected officer or photograph appears in the document. Moreover, when an elected official is affiliated with an agency, as here, and the mailing is prepared or sent in cooperation, consultation, coordination or concert with the elected officer, any use of the elected officer's name, photograph or office, or any reference to the officer is also prohibited. (Regulation 18901(b)(2)(A)(ii).)

Only where the mass mailing has not been prepared or sent in cooperation, consultation, coordination or concert with the affiliated elected officer may the officer's name be used, provided the official is not featured in the mailing. (Regulation 18901(b)(2)(A)(i); Riddle Advice Letter, No. A-89-096, copy enclosed).

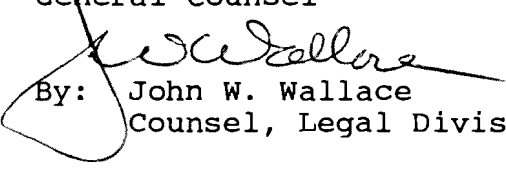
6. Section II(E) - In your discussion of the letterhead exception to the mass mailing statute you state that rosters may be used if all the member's names appear in the same type size and typeface. However, Regulation 18901(e) also requires that the names in a roster listing appear in the same location in the letterhead.

7. Section III - This section states that informational brochures that feature an elected official may be left for pick-up at the official's district office or public meetings attended by the official or the official's staff. This is partially correct. In the Connelly Advice Letter (No. A-89-198, copy enclosed), we stated that brochures may be left at any public agency's office or at any private location during an event at which the elected official makes a speech.

If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh
Enclosures

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California Legislature

Assembly Rules Committee

ROOM 3016 -- STATE CAPITOL
P.O. BOX 942649
SACRAMENTO, CALIFORNIA 94249-0001
TELEPHONE: (916) 445-8173

TOM BANE
CHAIRMAN

May 18, 1989

Ms. Kathryn E. Donovan
General Counsel
F.P.P.C.
428 J Street, Suite 800
Sacramento, California 95804

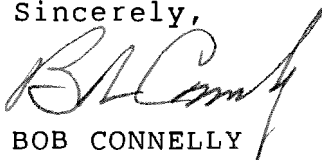
Dear Ms. Donovan:

Enclosed is a memorandum that the Assembly Rules Committee has prepared for distribution to all Assembly offices to clarify the mass mailing restrictions of Proposition 73.

To insure accuracy, the Rules Committee is submitting this memorandum to you for review.

Because it is essential that Members of the Assembly be kept current as to the F.P.P.C.'s Proposition 73 regulations, I am asking that you respond to this request as quickly as possible.

Sincerely,



BOB CONNELLY
Chief Administrative Officer

BC:tfw

M E M O R A N D U M

TO: All Assembly Offices

FROM: Bob Connelly
Chief Administrative Officer

DATE: May 11, 1989

RE: Proposition 73 and Statutory Mailing Prohibitions

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This memorandum is to clarify legislative mailing prohibitions and restrictions as prescribed by statute and Proposition 73. The following guidelines are designed to help you administer your mailing program.

I. MAILINGS IN GENERAL

A mailing at public expense:

- (1) must have a legislative purpose.
- (2) cannot be used for political campaign purposes.
- (3) cannot contain material intended to enhance or diminish passage of any ballot measure or the candidacy of any person.
- (4) cannot be used to ask voters how they would vote for candidates for public office.
- (5) cannot solicit contributions for a cause or causes in general.
- (6) cannot contain statements that are defamatory or libelous.
- (7) cannot promote activities or interests of an outside organization.

- (8) cannot use articles from a newspaper or magazine, unless permission has been given, in order not to violate copyright laws.
- (9) cannot be sent by a Member outside of his/her district unless it is in response to a specific request from an individual who resides outside of his/her district.

II. MASS MAILINGS

A. Proposition 73

In June of 1988, Proposition 73 was passed by the voters. Proposition 73 stated that "No newsletter or other mass mailing shall be sent at public expense." The Fair Political Practices Commission (FPPC) has issued permanent regulations interpreting Proposition 73 regarding mass mailings.

A mass mailing is defined by statute and regulation as over 200 substantially similar pieces of mail sent in a calendar month.

However, exempt from the mass mailing definition are the following:

- (1) Press releases to bona fide media recipients;
- (2) notices of governmental meetings;
- (3) mailings sent in the normal course of business from one governmental entity or officer to another governmental entity or officer;
- (4) mailings sent in connection with the payment or collection of funds by the an agency;
- (5) mailings required by statute, ordinance or court order;
- (6) information sent in response to specific requests contained in written correspondence, petitions, oral inquiries or coupons that were not solicited by the member or any third party at the request of the member.

The FPPC has defined "substantially similar" pieces of mail as pieces of mail that are substantially the same, with only minor changes or alterations for purposes of personalizing the piece of mail.

B. Exemptions to Proposition 73's Restrictions

(1) Members can respond in mailings of over 200 at least once to all incoming constituent mail, petitions and telephone calls that were unsolicited. However, unless the constituent specifically asks to be kept informed or updated or placed on a mailing list, only one response can be mailed for each contact. Members cannot induce constituents to request information or be placed on mailing lists, etc.

(2) Public meeting notices such as a "Town Hall" meeting is permitted. The regulation, however, states that the notice may only include the date, time, place and a "concise description" of the subject matter. The meeting must be sponsored by the Member and must relate to the legislative duties of the Member. The notice may be on the Member's regular letterhead, but may not include the Member's signature or image.

(3) Mass mailings are permitted for "official agency events." Official agency events include committee hearings. The announcement is limited to the time, date, place and subject matter. The mailing may also list the elected officers and others who will participate in the event.

C. Distribution as Defined by Proposition 73

Proposition 73 restricts what can be sent at public expense. Being sent can be thought of as mailed through the U.S. Post Office or as any method of distribution used to supplant the U.S. Post Office. The FPPC has defined being "sent" to include:

- Distribution through the U.S. Postal Service
- Commercial delivery
- Distribution by agency personnel or agents of the agency
- Distribution by any volunteer delivery mechanism
- Paid advertisement in any subscription publication
- Distribution by electronic mail communication

D. A Member cannot be Featured in Mass Mailings

For permitted mass mailings, the member may not be featured. The FPPC defines "featured" as follows:

"An elected officer is 'featured' in a mass mailing if he or she is singled out for attention of the reader by use of his or her signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface."

E. Letterhead and Photograph Limitations

For permitted mass mailings, the FPPC regulation limits letterhead design and the use of photographs. Generally, photographs are not allowed. If the stationery is that of a committee, all Members' names must appear in the same typesize and typeface in a roster-type listing. If the stationery is the Member's personal stationery, there is no typesize limitation for the Member's name.

Note: These limitations only apply if the mailing is a mass mailing, i.e., more than 200 pieces of unsolicited mail.

III. BROCHURES

Informational brochures that feature the Member by typeface and/or photograph or signature are permitted only for pick up by the public. They can be made available at district offices or public meetings attended by the Member or his staff; however, they cannot be distributed as defined above, passed out or pointed out by either the Member or his/her staff.

IV. PENALTY FOR VIOLATION

The penalty for violation of Proposition 73 is \$2,000 per violation, if an administrative proceeding is brought by the FPPC. The violation may be prosecuted as a misdemeanor.

V. LEGISLATIVE COUNSEL'S ADVICE

The FPPC mass mailing regulations as instituted by Proposition 73 are still being refined. Therefore, some areas still may not be clear. Keeping this in mind, the Assembly Rules Committee will seek the advice of Legislative Counsel if there is any question on any mailing in regards to the above prohibitions.

VI. WORK ORDERS

Work orders must be filled out and delivered to the Capitol Support Services Coordinator, located in B-121, for all Assembly mailings.

VII. APPROVAL TURN AROUND TIME

In order for Assembly Rules to have time to review and approve your mailings, especially if it is voluminous, the work order should be delivered to the Coordinator's Office at least one day in advance.

If you have any questions, please contact Carrie Cornwell, Assembly Rules Committee, at 5-1083.



California Fair Political Practices Commission

May 23, 1989

Bob Connelly
Chief Administrative Assistant
Assembly Rules Committee
State Capitol, Room 3016
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Letter No. 89-307

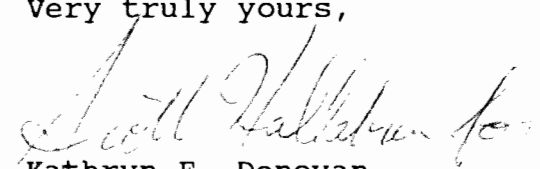
Dear Mr. Connelly:

Your letter requesting advice under the Political Reform Act was received on May 22, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Kathryn E. Donovan
General Counsel

KED:plh



California Fair Political Practices Commission

July 18, 1989

Bob Connelly
Assembly Rules Committee
State Capitol, Room 3016
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Informal
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Our File No. I-89-307

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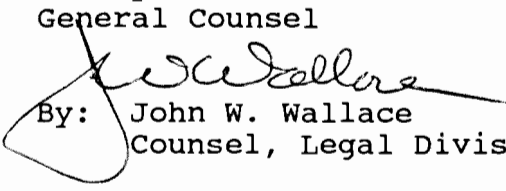
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General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh
Enclosures

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P.O. BOX 942849
SACRAMENTO, CALIFORNIA 94249-0001
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TOM BANE
CHAIRMAN

May 18, 1989

Ms. Kathryn E. Donovan
General Counsel
F.P.P.C.
428 J Street, Suite 800
Sacramento, California 95804

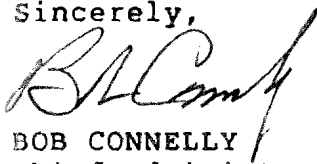
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BOB CONNELLY
Chief Administrative Officer

BC:tfw

M E M O R A N D U M

TO: All Assembly Offices

FROM: Bob Connelly
Chief Administrative Officer

DATE: May 11, 1989

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- Distribution through the U.S. Postal Service
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Memo
April 14, 1989
Page 5

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